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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)

Cable Home Wiring)

MM Docket No. 92-260

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COMMENTS

Time Warner Cable ("Time Warner"), a division of Time Warner Entertainment Company, L.P., hereby respectfully submits these comments in response to the above-captioned Further Notice of Proposed Rulemaking^{1/} released by the Federal Communications Commission ("Commission") on January 26, 1996. Time Warner owns and operates cable television systems nationwide.

I. INTRODUCTION

The Commission's FNPRM on cable home wiring seeks comment on only two principal issues regarding cable home wiring: (1) whether to allow the owner of a multiple dwelling unit ("MDU") building to purchase loop-through wiring when all subscribers in that building want to switch to a new service provider, and issues related thereto; and (2) whether

^{1/}Further Notice of Proposed Rulemaking in MM Docket 92-260, FCC 95-503, ___ FCC Rcd ___ (rel. January 26, 1996) ("FNPRM").

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rights to cable home wiring should be granted to persons other than the subscriber or the cable operator.

In its First Order on Reconsideration,^{2/} the Commission properly decided to continue to exclude loop-through wiring systems from the cable home wiring rules because inclusion of such systems would be impractical, and would preclude individual subscriber control, which is an essential element of the home wiring rules and the Congressional mandate implemented by such rules.^{3/} However, the Commission decided to consider a proposal offered by Liberty Cable Company, Inc. ("Liberty") that would allow an MDU building owner to purchase home wiring in the very limited situation when all of the subscribers served by a loop-through configuration simultaneously decide to switch to an alternative video programming service provider.^{4/} For numerous technical, practical and sound policy reasons set forth in these comments, Time Warner opposes subjection of loop-through wiring configurations to the home wiring rules. Time Warner further contends that the granting of rights to cable home wiring to persons other than the subscriber or the cable operator is contrary to Congressional directives embodied in the home wiring provision.

^{2/}First Order on Reconsideration in MM Docket 92-260, FCC 95-503, ___ FCC Rcd ___ (rel. January 26, 1996) ("First Order on Recon.").

^{3/}Id. at ¶ 36.

^{4/}Id.

II. THE COMMISSION SHOULD NOT INCLUDE LOOP-THROUGH WIRING IN ITS CABLE HOME WIRING RULES IN ANY SITUATION.

The Commission has carefully considered the issue of whether to include loop-through wiring systems in its cable home wiring rules on two occasions now, and both times, has correctly decided that such wiring should not be included in the home wiring rules.^{5/} This decision should not be altered; it is practical, reasonable, and within the scope of the home wiring provision enacted by Congress in the 1992 Cable Act.^{6/}

MDU buildings wired with loop-through configurations deliver signals to the individual dwelling units in a chain -- every unit is connected to the unit next to it. If one part of the chain is broken or removed, all subsequent units in the chain will not be able to receive the video programming signals that are delivered to the first unit(s) in the chain.

Liberty's proposal to include loop-through wiring in the home wiring rules,^{7/} even in the very limited situation articulated in the FNPRM, is beyond the Commission's authority as established by Congress in the home wiring provision. Congress expressly recognized that "[i]n the case of multiple dwelling units, this [home wiring] section is not intended to cover common wiring within the building."^{8/} Thus, if the Commission were to promulgate rules requiring cable operators to allow MDU building owners to purchase loop-through wiring in

^{5/}See Report and Order in MM Docket 92-260, 8 FCC Rcd 1435, ¶ 12 (1993); First Order on Recon. at ¶ 36.

^{6/}See 47 U.S.C. § 544(i).

^{7/}See Liberty's Petition for Reconsideration and Clarification in MM Docket 92-260, at 6-7 (filed April 1, 1993).

^{8/}H.R. Rep. No. 628, 102d Cong., 2d Sess. 119 (1992) ("House Report").

the limited situation set forth in the FNPRM, it would necessarily mean that the home wiring rules would apply to some common wiring in the MDU and therefore, be contrary to Congress' express intent.

Liberty's desperate attempt to gain control over at least some loop-through wiring systems by limiting such control to situations where all subscribers served by a loop-through configuration simultaneously want to switch video programming service does not alter the fact that Liberty is asking the Commission to include common wiring in its home wiring rules in direct contravention of Congress' specific intent. The Commission has carefully adhered to Congress' intent with regard to the exclusion of all common wiring from the home wiring rules, and it should not succumb to the continuous badgering to alter its decision, especially when to alter it in the manner proposed by Liberty would clearly violate Congress' intent.

The rapid rate of resident turnover in MDUs is further reason not to enact special home wiring rules to address the limited situation proposed by Liberty. Given the high turnover rate of MDU residents, the chances of having every resident on a loop, upon each turnover, desire the same alternative video programming service as every other resident on the loop are negligible, and simply do not warrant an exemption from the Commission's repeated exclusion of loop-through wiring from the home wiring rules. Furthermore, the turnover in MDU residents would create a constant state of confusion -- one month, the MDU building could be within the narrow situation proposed by Liberty, and the next month, it could be outside the situation. This constant switching from one situation to the other would mean that ownership and control of the wiring would also be in constant flux.

Such a situation is administratively implausible, and could result in frequent disruption of service for the residents of the MDU.^{9/}

In Time Warner's experience in Manhattan, where it competes with Liberty, even in situations where Liberty signs a building-wide service agreement with the MDU owner, some residents of the MDU insist on retaining franchised cable television service. In an effort to achieve consensus among the residents, Liberty or the MDU building's management have sometimes engaged in deception or strong-arm tactics to coerce residents to terminate franchised cable service and accept Liberty's service. When Time Warner has called its subscribers to confirm their intentions to continue franchised cable service, it has often learned that its subscribers were pressured into signing consent forms terminating their franchised cable service in favor of Liberty's service or were misled to believe that they had no other choice. Such practices by Liberty are analogous to "slamming" techniques often employed by long-distance carriers. These practices have been condemned by the Commission.^{10/} Moreover, the recent Telecommunications Act of 1996 contains expanded enforcement procedures designed to guard against illegal slamming.^{11/} If the Commission were to expand its home wiring rules to include loop-through configurations in the limited situation where all subscribers on a loop wanted to switch service providers, the use of

^{9/}Congress did not intend for the home wiring rules to cause disruptions to subscribers or former subscribers. Cf. House Report at 118 (the right of subscribers to acquire wiring would "avoid any disruption the removal of such wiring may cause").

^{10/}See 47 C.F.R. § 64.1100.

^{11/}47 U.S.C. § 258.

coercive and deceptive practices in MDUs with loop-through systems would undoubtedly increase in order to achieve an illusory consensus in favor of the alternative service.

Furthermore, if MDU building owners were given the opportunity to purchase loop-through wiring, even in the narrow situation proposed, competition would not be fostered because the building owner would have total control over what type of multichannel video service all of the residents on the loop receive. Since one of the primary goals of the 1992 Cable Act is to foster competition in the multichannel video programming distribution marketplace,^{12/} rules that impede this goal should not be enacted. As Time Warner has repeatedly suggested, competition would be best fostered in MDUs by allowing each multichannel video programming provider to install its own wiring, thus allowing MDU residents the maximum possible choice among various competing services.

III. THE COMMISSION SHOULD NOT ENACT RULES GRANTING RIGHTS TO CABLE HOME WIRING TO PERSONS OTHER THAN THE SUBSCRIBER OR CABLE OPERATOR.

Congress did not confer any benefits or opportunities on landlords of MDUs via the home wiring rules.^{13/} The Commission recognized this Congressional mandate when it enacted the home wiring rules in 1993. The rules specifically state that, upon voluntary termination of cable service, cable operators must give "the subscriber the opportunity to

^{12/}Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460, § 2(b) (1992) (statement of policy).

^{13/}See House Report at 118 ("subscribers who terminate cable service should have the right to acquire wiring that has been installed by the cable operator in their dwelling unit" (emphasis added)).

acquire the wiring at the replacement cost."^{14/} Implicit in this is the fact that, prior to voluntary termination of cable service, the cable operator has the exclusive right to the home wiring. Nowhere in the legislative history, or in the home wiring rules as enacted, is there any mention of conferring any benefits or privileges upon owners of MDUs whose tenants have terminated their subscriptions to franchised cable service, or expressed a desire to do. No such benefit or privilege should, therefore, be created by amendments to the home wiring rules now, and to do so would be utlra vites.

IV. POSSIBLE PROHIBITION ON FUTURE INSTALLATIONS OF LOOP-THROUGH CONFIGURATIONS.

The FNPRM solicits comment on whether the Commission should prohibit future installations of loop-through wiring systems, and whether it even has the statutory authority to do so.^{15/} Time Warner questions the Commission's statutory authority to enact such a prohibition. Section 16(d) of the 1992 Cable Act (the home wiring provision) simply directs the Commission to promulgate rules concerning the disposition of cable home wiring after subscriber termination of service; it does not direct the Commission to enact far-reaching rules that encompass wiring issues beyond the disposition of cable home wiring.^{16/} Nevertheless, it has been Time Warner's experience that loop-through architecture continues to be a viable approach for certain MDUs, particularly where the loop is installed in an

^{14/}47 C.F.R. § 76.802 (emphasis added).

^{15/}FNPRM at ¶ 40.

^{16/}See 47 U.S.C. § 544(i) ("the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber").

accessible area, such as a hallway molding. Such an approach can facilitate a number of broadband providers in an MDU building, thereby enhancing consumer choices.

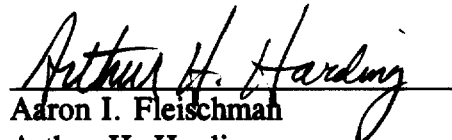
V. CONCLUSION

For all of the reasons set forth herein, and for the reasons set forth in Time Warner's previous Comments, Reply Comments and Response to Petitions for Reconsideration in MM Docket 92-260, the Commission should not: (1) amend its home wiring rules to include loop-through configurations under any circumstances; or (2) grant cable home wiring rights to persons other than the subscriber or cable operator.

Respectfully submitted,

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Dated: March 18, 1996